

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CA1718
)	EEOC NO.: 21BA90599
)	ALS NO.: 09-0701
LAURENCE HELENE RABE,)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Rozanne Ronen, and Nabi Fakroddin presiding, upon Laurence Helene Rabe's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CA1718; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (1)** The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.

In support of which determination the Commission states the following findings of fact and reasons:

1. On January 14, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her employer, United Airlines ("Employer") harassed her because of her age, 41 (Count A), her sexual orientation, lesbian (Count B), her national origin, France (Count C), and her citizenship status, non-U.S. citizen (Count D); and that the Employer discharged the Petitioner because of her age (Count E), her sexual orientation (Count F), her national origin (Count G), her citizenship status (Count H) and in retaliation for having opposed unlawful discrimination (Count I), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On November 6, 2009, the Respondent dismissed the charge for Lack of Jurisdiction. On December 4, 2009, the Petitioner filed a timely Request.
2. The Employer is an air carrier, and as such is regulated by the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act of 1978 ("FAA").
3. Section 41713(b)(1) of the FAA defines its preemptive effect over state laws relating to airline rates, routes and services:

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

“Except as provided in this subsection, a State, political subdivision of a State, or political authority of at least 2 States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier that may provide air transportation under this subpart.”

See 49 U.S.C. § 41713(b)(1)²

4. The Petitioner was employed as a flight attendant.
5. The Respondent determined that a prior Commission decision, Stratigos v. American Airlines, Inc., ___ Ill. HRC Rep. ___, (Charge No. 2007CF0334)(March 17, 2009), precluded the Respondent from investigating the Petitioner’s charge because in Stratigos it was held that the petitioner’s claim under the Act was preempted by the FAA.
6. In her Request, the Petitioner argues the Respondent is the proper forum in which to resolve her claim.
7. In its response, the Respondent argues it lacks jurisdiction to investigate the Petitioner’s allegations because the Petitioner’s claim is preempted by the FAA.

Conclusion

The Commission has determined that the Respondent’s dismissal of the Petitioner’s charge shall be vacated, and the charge shall be remanded to the Respondent for further investigation.

The Commission recently decided a request for review that raised the same issue as that which is presented by the Petitioner’s Request: Whether or not an airline employee’s discrimination claim against her airline employer, brought pursuant to the Act, was preempted by the FAA. See In re Request for Review of Yolanda Farris, IHRC, ALS No. 09-0467 (May 26, 2010).

In Farris, the Respondent argued that Farris’ claim was preempted by the FAA.

In Farris, based on the Commission’s review of federal decisions interpreting the scope of the FAA preemption, the Commission determined that, at minimum, the FAA did not pose an absolute bar to state civil rights claims simply because the respondent-employer is an airline carrier. See, e.g., Dan Morales v. Transworld Airlines, Inc., et al., 504 U.S. 374, 390 112 S.Ct. 2031, 2040 (1992) (*Effect of*

² The Respondent’s response refers to 49 U.S.C. Section 1305(a)(1) as the relevant section. In 1994, the FAA preemption clause was renumbered by Congress from 49 U.S.C. § 1305(a) to 49 U.S.C. § 41713(b). See Revision of Title 49, Pub.L. No. 103-272, 108 Stat. 745, 1143 (1994). The language was also slightly modified, but there was no change in the substantive meaning of the preemption. See Chrissafis v. Continental Airlines, Inc., 940 F.Supp.1292, 1295, fn. 1 (N.D. Ill. 1996).

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some state actions on airlines, rates, routes, and services may be too tenuous to subject those state actions to FAA preemption); see also John Meyer v. United Airlines, 2009 WL 367762 (N.D. Ill. 2009) (State common law retaliatory discharge claim not preempted by the FAA because impact of claim on airlines' services was too remote and peripheral)

The Farris reasoning applies to the Request now pending before the Commission. Given the status of the authority interpreting the scope of the FAA preemption provision, it is arguable that the Petitioner's claim would not be preempted by the FAA. However, the Commission declines to determine, as a matter of law, the applicability and scope of the FAA preemption provision to the Petitioner's charge at the investigatory stage of this matter.

Rather, the Commission determines that the dismissal of the Petitioner's charge shall be vacated and remanded to the Respondent, which shall proceed with its investigation of the Petitioner's charge.

The Respondent shall first determine whether or not the Petitioner's charge meets the jurisdictional requirements of the Act as statutorily defined by the Act. If the Respondent determines the Petitioner's charge meets the jurisdictional requirements of the Act, the Respondent shall then proceed to investigate the substantive allegations of the charge, and make a determination in accordance with the Act.

If the Respondent determines that the Petitioner's charge does not meet the jurisdictional requirements of the Act, either in whole or in part, the Respondent shall state this finding and its reasons in support.

THEREFORE, IT IS HEREBY ORDERED THAT

- (1) The Respondent's dismissal of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION** as herein instructed.**

This Order is not yet final and appealable.

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Entered this 9th day of June 2010.

Commissioner Munir Muhammad

Commissioner Nabi Fakroddin

Commissioner Rozanne Ronen